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C O N F I D E N T I A L SECTION 01 OF 03 MEXICO 004267

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SUBJECT: FORMER MAGISTRATE SEES FULL RECOUNT AS UNLIKELY

REF: A) MEXICO 3422 B) MEXICO 3907

Classified By: ACTING POLITICAL COUNSELOR ALAN MELTZER, REASONS: 1.4(B/D).

Summary

¶1. (U) The Secretariat for Foreign Relations (SRE) recently held its third post-electoral briefing for the diplomatic community, in which Fernando Franco Gonzalez, former Electoral Tribunal (TEPJF) magistrate and current head of the Public Law Studies Center at the Autonomous Technological Institute of Mexico (ITAM), and Maria de los Angeles Fromow, head of the Special Office for Electoral Felonies (FEPADE), participated. Although the briefing was meant to inform the diplomatic community of the rules and procedures governing the work of the TEPJF and FEPADE, the topic du jour centered on predicting what the TEPJF's next move would be. Franco emphasized that although a complete recount was not specifically provided for in the law, in his opinion, the TEPJF had the authority to order one. Nevertheless, he highlighted several reasons why he strongly doubted the TEPJF would do so.

¶2. (U) For her part, Fromow discussed the election-related cases being investigated by FEPADE. She noted that her office had worked hard in recent years to encourage citizens to file complaints when they believed electoral law violations had occurred and, in fact, citizens, complaints accounted for a far larger share of the complaints filed in this election season than in the 2000 election. Nevertheless, she said that of the approximately 100 complaints her office has investigated so far, representing 10 percent of all complaints filed, only a single one appeared meritorious. End summary.

Former Magistrate Sees a Complete Recount as Possible...

¶3. (U) Franco began the session by noting that the TEPJF process had three distinct stages. First, the TEPJF must investigate and resolve each of the 364 complaints filed by the parties (231 from the PRD and 133 from the PAN), for which the deadline is August 31. The next step is determining the final vote count, which incorporates the restated results from any precincts that were recounted. The third step is the validation (or invalidation) of the election and, in the case of its validation, the declaration of a winner. The deadline for determining the final count and declaring a winner is September 6.

¶4. (U) Franco observed that the electoral code does not

specifically provide for a complete, nationwide recount, and one had never previously been ordered in a presidential election. Given the TEPJF's broad authority, however, he believed the TEPJF could order a full recount, although he highly doubted it would do so unless it believed such a recount was absolutely indispensable to determining the winner.

...But Very Unlikely

¶5. (U) Franco highlighted several reasons why, in his opinion, the magistrates would be very hesitant to order a full recount. First, he thought they would be reluctant to substitute a new count for that of the citizen election workers except in those precincts with count-related irregularities. Franco said that in fact, from what he knew of the complaints submitted by the PRD, many were for procedural errors that had no bearing whatsoever on the vote count. For example, the results were impugned in some precincts because the voting station had been set up in a location different from the pre-approved site. In the case of such an irregularity, he noted that what was at issue was not the vote count, but rather the integrity of the election in that precinct. Accordingly, if the magistrates concluded that such an irregularity affected the integrity of the election in that precinct, the appropriate remedy would be to annul the result in that particular precinct, rather than to order a recount.

¶6. (U) Franco dismissed the PRD's claim that a complete, nationwide recount could be completed in six days. He said their estimate was based on the assumption that the votes

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from a single precinct could be recounted in 20 minutes, a very unrealistic assumption in his view. The PRD's estimate was also based on the unlikely assumption that the recount would proceed around the clock. Franco added that under Mexican law, there was absolutely no flexibility in the deadlines facing the TEPJF, and so the recount period could not be extended.

What About the PRD's Umbrella Complaint?

¶7. (SBU) Franco also opined that the PRD's umbrella complaint -- which addresses a range of alleged systematic flaws in the election -- does not support AMLO's call for a nationwide recount. In the umbrella complaint, the PRD reportedly contends that the presidential campaign was fundamentally flawed by such factors as President Fox's overt support of Calderon's candidacy; the alleged use of federal social programs to influence voters; and the use of negative campaign ads known as the "guerra sucia," and IFE's late intervention in stopping them. Franco noted that if the TEPJF considered these complaints valid and sufficiently serious to call into question the integrity of the entire election, the proper remedy would not be to order a recount, but rather to annul the entire election. Nevertheless, Franco strongly doubted that the magistrates would conclude that the election was so fundamentally flawed that it should be annulled in its entirety, a position we previously have heard from the magistrates themselves (ref A).

Prosecutor Finds Few Criminal Violations of the Electoral Law

¶8. (U) During her presentation, Maria de los Angeles Fromow discussed the difference between FEPADE's role in the electoral process and that of the TEPJF. She noted that her office focused exclusively on investigating alleged electoral crimes and prosecuting the individuals found responsible; it did not address the legitimacy of the election. She stated that this year, her office had worked to encourage citizens to file complaints wherever they believed an electoral crime

had been committed, and implemented new procedures intended to make filing such complaints easier. In particular, complaints of suspected electoral crimes can now be filed in any office of the Public Ministry nationwide; FEPADE has trained personnel in each such office to handle such complaints under the electoral law.

¶9. (U) Fromow said that as a result of increased public awareness, the proportion of complaints filed by private citizens (as opposed to by public officials and political parties) had increased from 10 percent in 2000 to 45 percent in 2006, which she considered a very positive development. Notwithstanding this increased public awareness, on Election Day, only 106 complaints were filed, a total which she considered very low. By comparison, 125 complaints were filed on Election Day 2000, in an election which had been considered clean. She said the majority of the Election Day complaints this year were against individuals who allegedly campaigned on Election Day, which is prohibited. Approximately 23 of the complaints alleged efforts to buy or coerce voters and 4 complaints were for voter round-ups (acarreo), in which parties transport large groups of voters to the polls, with the understanding that they are to vote for that party's candidate.

¶10. (U) During the entire campaign season, her office received a total of 990 complaints and has thus far completed its investigation of 10 percent of them. Of the approximately 100 complaints thus resolved, FEPADE found only one complaint that stated a bona fide criminal violation of the electoral law; it plans to bring charges in that case, which involved a person who sought to buy the voting credential of another voter. On the whole, Fromow seemed to believe that there was nothing out of the ordinary about this election and that the quantity of complaints received was normal for an election involving nearly 42 million voters in over 130,000 precincts.

Tribunal Staffer Offers Update

¶11. (C) In a July 31 meeting to discuss a visa referral, an aide to one of the TEPJF magistrates offered poloff an update on the institution's work. He emphasized that the magistrates are taking very seriously their self-imposed news

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blackout and that sensitive meetings -- such as the two campaigns' presentations to the TEPJF last weekend -- were limited only to the campaign representatives and the magistrates themselves. He sensed that the magistrates believe it is important for the country to reach closure on the election and would probably seek to issue their decision in advance of the August 31 deadline; he predicted they would reach their decision by August 20. He understood that the PRD had only impugned 36,000 precincts, not the 50,000 reported in the media, and that the PAN had impugned many of the same precincts as the PRD.

¶12. (C) Although our contact emphasized that he was not privy to the magistrates' thinking about the case, he himself took a fairly legalistic view, opining that while some of the parties' complaints regarding particular precincts undoubtedly met the legal threshold for a recount, others surely did not. Accordingly, he believes that the TEPJF most likely will order a partial recount, focusing on those precincts in which the parties met their burden of proof. He noted that limited, partial recounts are routine in elections. Our contact concluded by noting that although many errors were undoubtedly committed in the vote count -- usually involving small numbers of votes -- he had not seen any evidence of fraud and lamented that human error was being confused with fraud.

Comment

¶13. (SBU) Franco's view that the TEPJF is unlikely to order a full recount coincides with that of other experts who have consulted in recent weeks (refs A and B). He reinforced the impression that although the magistrates have considerable discretion on what to do with these cases, they would likely stick to the letter of the law, and were most likely to order a partial recount, the only question being just how many precincts would be recounted. Both he and Fromow conveyed the impression that they sensed little out of the ordinary in this election other than a very narrow margin.

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